

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANDRES E.,

Claimant,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

Case No. 2011010897

DECISION

The hearing in the above-captioned matter was held on May 24, 2011, at Los Angeles, California, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH). The Service Agency, Frank D. Lanterman Regional Center (FDLRC or Service Agency) was represented by Mark Baca, Fair Hearing Coordinator. Claimant Andres E. was represented by his mother and father, Carmen E. and Rene E.¹ Claimant's mother was assisted by an interpreter.

Evidence was received, argument was heard, and the matter was submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

ISSUE PRESENTED

May the Service Agency terminate funding for a monthly bus pass?

¹ Initials are used in the place of Claimant's surname in order to protect Claimant's privacy.

FACTUAL FINDINGS

1. Claimant Andres E. is an 11-year-old boy who is eligible to receive services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.² Claimant is eligible for services based on a developmental disability, Autistic Disorder.

2. By a letter dated January 4, 2011, the Service Agency gave Claimant and his parents notice of a proposed action, that is, to terminate funding for a monthly bus pass for use with public transportation. (Ex. 2.)

3. Thereafter, Claimant's mother filed a request for fair hearing, seeking to continue the service.

4. All jurisdictional requirements have been met.

5. Claimant lives with his parents and two siblings in Los Angeles. Claimant is also asthmatic, and overweight. He receives special education services from the Los Angeles Unified School District, at an elementary school. He receives respite care from the Service Agency. He is entitled to receive some funding from SSI (social security), and he is eligible for 30 hours per month of IHSS (In Home Supportive Services). His father is employed as a waiter, and his mother does not work outside of the family home.

6. In November 2009, Claimant's Individual Program Plan (IPP) was amended to provide that the Service Agency would provide for a monthly MTA (Metropolitan Transit Authority) bus pass through October 31, 2010. The bus pass, which now costs \$75.00 per month, was provided so that Claimant could be transported to appointments at school, or his doctors, or community activities. The IPP amendment states that the bus passes would be provided "as an exemption." (Ex. 7, p. 6.)

7. In 2010, the Service Agency encouraged Claimant's mother to apply for transportation services from Access Services. As explained during the hearing, Access Services is a county-funded transportation firm. For a small fee, they will pick up a disabled person and transport them to their destination. The fee is \$2.25 for trips of less than 20 miles; the fee rises to \$3.00 if the trip is more than 20 miles. Furthermore, if Claimant was accepted for Access Services transportation, he could ride the local busses for free, as could a companion who would assist him.

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

8. The November 24, 2010 amendment to the IPP states that “as an exemption to Regional Center Service Standards, the Lanterman Regional Center will fund for monthly MTA bus pass from 7/1/10 to 12/31/10 pending completion of application for Access Services.” (Ex. 5, p. 3.)

9. However, on November 17, 2010, Claimant’s service coordinator, Ms. Gomez, made an entry into the ID notes for Claimant which states, in part, that mother was informed that she was authorized for Access Transit, so that she could ride the bus with Claimant, or in the vans. However, Claimant’s mother did not want to terminate the funding for the bus pass, telling the service coordinator that she used it for things such as attending training and workshops offered at the Service Agency offices. She also stated that she could not afford to buy a bus pass, and asked to have the funding extended another six months, to June 2011.

10. The ID note indicates that Ms. Gomez explained to Claimant’s mother that services are provided by the Service Agency to the disabled consumers, and not to their families. Ms. Gomez did state that she would present the request to management.

11. As indicated in Factual Finding 2, the decision was made not to extend the funding. An informal meeting was held on February 10, 2011, in an attempt to resolve the matter, but the Service Agency would not agree to extend the funding. However, after Claimant requested a hearing, the bus pass was funded as “aid paid pending” the outcome of this appeal.

12. The monthly bus passes cost \$75 each, while a day pass for the public transportation system costs \$6.³ As noted above, Claimant can ride the bus for free, as can his mother when she is with him, because they qualify for Access Services transportation. While Ms. Gomez testified that some of her clients have complained that the vans, when utilized, tend to run late, they are available 20 hours per day, and reservations can be made well in advance.

13. During the hearing, Claimant’s mother pointed out she often uses the bus to pick up medicine for her son. However, her son, who is treated at Kaiser, can receive his medications in the mail. Mrs. E. acknowledged that she uses the bus pass to run errands, such as grocery shopping, for her own visits to the doctor, and otherwise, on an almost daily basis. These errands are often run while Claimant is in school.

14. The family finances are stretched. Mr. E.’s income fluctuates, and according to Claimant’s mother, the SSI is being reduced from approximately \$450 per month to \$250 per month. Mrs. E. is employed as the IHSS worker, but the 32 hours per month does not provide a significant amount of income. Further, Claimant’s siblings need special education

³ This latter amount is detailed in the letter following the informal meeting, Exhibit 3, at page 1. The bus pass and day pass may also be used on the local subway and light rail lines that are part of the MTA.

services, putting further stress on the family. Although the family owns a van, Mrs. E. does not have a driver's license.

15. What is not clear from the record is the extent that the Service Agency will fund the van services if those are necessary to transport Claimant. Put another way, the Access Services are not completely free, and van service may, on some occasions be necessary and appropriate.

LEGAL CONCLUSIONS

Jurisdiction

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 4.

Rules of General Application

2. Services are to be provided in conformity with the IPP, per section 4646, subdivision (d), and section 4512, subdivision (b). Consumer choice is to play a part in the construction of the IPP. Where the parties can not agree on the terms and conditions of the IPP, a Fair Hearing may establish such terms. (See § 4710.5, subd. (a).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d); 4501; 4502; 4502.1; 4512, subd. (b); 4640.7, subd. (a); 4646, subds. (a) & (b); 4648, subds. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken; the regional centers could simply provide the same services for all consumers. The Lanterman Act assigns a priority to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subds. (a)(1) & (a)(2).)

4. Services provided must be cost effective (§ 4512, subd. (b), *supra*), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b); 4651, subd. (a); 4659; and 4697.) To be sure, the regional centers' obligations to other consumers are not controlling in the individual decision-making process, but a fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

5. (A) Section 4512, subdivision (b), of the Lanterman Act provides, in pertinent part, that

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. . . . The determination of which services and supports are necessary shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer’s family, and shall include consideration of . . . the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, . . . physical, occupational, and speech therapy, . . . habilitation, . . . recreation, . . . camping, community integration services, . . . respite, . . . social skills training . . . supported living arrangements, . . . *and transportation services necessary to ensure delivery of services to persons with developmental disabilities.* (Emphasis added.)

6. Services are to be chosen through the IPP process. (§ 4512, subd. (b).) The regional center is also to utilize the service coordination model, in which each consumer shall have a designated service coordinator “who is responsible for providing or ensuring that needed services and supports are available to the consumer.” (§ 4640.7, subd. (b).)

7. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased is made up of the disabled individual, or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

8. Pursuant to section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” Further, services and supports are to assist disabled consumers in achieving the greatest amount of self-sufficiency possible; the planning team is to give the highest preference to services and supports that will enable a minor child with developmental disabilities to remain with his or her family. (§ 4648, subd. (a)(1).)

Legal Conclusions Specific To This Case

9. (A) Section 4659, subdivision (a)(1), provides

(a) Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(B) In this case, the Service Agency has acted correctly to seek out the “generic” transportation services. Plainly, Claimant can now use the bus for free, which represents a cost saving to the Service Agency. And, if he needs to use the vans, there is no reason that a system of reimbursement can not be worked out with the Service Agency. That is, if the Service Agency is obligated to provide transportation so that Claimant can access services, then it can not thrust that cost, small as it is, on Claimant, where the generic resource has some charge. In any event, it appears such will be less costly than the monthly bus pass, so long as the van transports are used for Claimant’s legitimate transportation needs.

10. (A) As noted above in Legal Conclusion 5, section 4512, subdivision (b), provides that transportation can be provided by the regional centers to assure delivery of services to the disabled person. Hence, the Service Agency might be obligated to provide transportation to a place where a vendored service was provided, such as a social skills group. That might also cover transport to a doctor’s appointment.

(B) However, it is clear that the monthly bus pass is primarily being used by Claimant’s mother to run various errands, such as a daily trip to the market, and it is not often being used to transport Claimant to needed services. The Lanterman Act was not enacted to provide services directly to the family members of a disabled person. Mrs. E. is not entitled to a bus pass from FDLRC for her use, regardless of her financial circumstances. This is a further reason that the appeal must be denied.

ORDER

The appeal of Claimant Andres E. is denied, and the Service Agency may terminate for a monthly bus pass. However, it will be obligated to pay for van trips where those trips are necessary to ensure delivery of services to Claimant.

June 8, 2011

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

NOTICE:

THIS IS THE FINAL ADMINISTRATIVE DECISION IN THIS MATTER, AND BOTH PARTIES ARE BOUND BY IT. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY (90) DAYS OF THIS DECISION.